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No. 07-1359

IN THE

Supreme Court of the United States

JULIA McCAIN LAMPKIN-ASAM,

Petitioner,

v.

VOLUSIA COUNTY SCHOOL BOARD, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT SUZANNE EVANS, R.N.

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QUESTIONS PRESENTED

I. Whether Petitioner presented any compelling reason to enable this Court to exercise its certiorari jurisdiction and reach the merits of the case, where Petitioner failed to not only establish but address any of the requisites of Rule 10 or otherwise?

II. Whether Petitioner presented any compelling reason for this Court to exercise its certiorari jurisdiction and reach the merits of the case, where Petitioner, just as she did in the lower court, presented a petition that was unintelligible?

III. Whether Petitioner's claims against Respondent Evans failed, as a matter of law?

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STATEMENT OF THE CASE

The instant Petition primarily concerns the adverse, yet just, result obtained by a former attorney's repeated failure to abide by governing federal rules of civil procedure, in addition to failing to comply with the district court's orders. Petitioner's failures occurred in the midst of presenting her *pro se* pleadings to the federal trial court.

Petitioner, Plaintiff below, filed suit in the Middle District of Florida during January 2007. Her first pleading was dismissed on Respondents' motions to dismiss because "it was disjointed, repetitive, disorganized and barely comprehensible." *Lampkin-Asam v. Volusia County Sch. Bd.*, No. 6:07-cv-116-Orl-31DAB, WL 1129002, at *1 (M.D. Fla. Apr. 16, 2007). In its initial order, the district court concluded

> [i]t is impossible for the Court to decipher which claims are brought against which parties under which counts. Plaintiff purportedly [holds] J.D. and Ph.D. degrees, and practiced as an attorney in Alabama until she was disbarred. While federal courts typically grant greater latitude to the pleadings of *pro se* plaintiffs, the complaint filed in this case is unacceptable by any standard, and particularly from a former attorney.

Id.

Plaintiff followed her initial pleading with an amended complaint which, like the first, was also "disjointed, repetitive, disorganized and barely comprehensible." *Id.* The district court could not "unravel th[e] document, and the Defendants should not be required to respond to it." *Id.*; *see 2025 Emery Highway, L.L.C. v. Bibb County*, 377 F.2d 1310, 1317 (M.D. Ga. 2005) (concluding the court's attempt to, essentially, understand plaintiff's pleading was "no more successful than an attempt to herd cats"). Nevertheless, Plaintiff was permitted another opportunity to amend her pleading but, at the same time, admonished that she must satisfy the requirements of the Federal Rules of Civil Procedure. *Lampkin-Asam v. Volusia County Sch. Bd.*, No. 6:07-cv-116-Orl-31DAB, WL 1129002, at *1.

Plaintiff then filed her third pleading, or a second amended complaint. *Lampkin-Asam v. Volusia County Sch. Bd.*, No. 6:07-cv-116-Orl-31DAB, WL 1577814, at *1 (M.D. Fla. May 16, 2007). Yet, again, Plaintiff's third pleading was "a 26-page labyrinth of claims, counts, accusations and repetition." *Id.* at *2. The district court concluded that "litigation framed by such a pleading would certainly waste scarce judicial and parajudicial resources, impede the due administration of justice and, in a very real sense, amount to an obstruction of justice." *Id.* Having been forewarned, not once but twice on the same issue by the district court, Plaintiff's third pleading was dismissed with prejudice.[1] *Id.*

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[1] The district court stated in its two reported decisions that it acted *sua sponte*, which it has the rule and inherent authority (Cont'd)

On appeal to the Eleventh Circuit, the court of appeals observed that "[i]n her second amended complaint, [Plaintiff] sought relief under 42 U.S.C. § 1983" based upon a student hitting her in the back of the head while she, a substitute teacher, was teaching math at Deltona Middle School. *Lampkin-Asam v. Volusia County Sch. Bd.*, No. 07-12704, WL 80708, at *1 (11th Cir. Jan. 9, 2008) (*per curiam*). "The complaint alleged, among other things, that those defendants violated her Fourteenth Amendment due process rights." *Id.*

Upon *de novo* "review of Lampkin-Asam's second amended complaint, [the court] agree[d] with the district court that it is confusing, incoherent, and clogged with seemingly irrelevant factual allegations." *Lampkin-Asam v. Volusia County Sch. Bd.*, No. 07-12704, WL 80708, at *2 (11th Cir. Jan. 9, 2008) (*per curiam*). Accordingly, the court of appeals affirmed the judgment of the district court, concluding that Plaintiff had sufficient opportunity to correct the deficiencies in her pleadings and "as a former attorney and person who possess[es] formal legal training, should have been able to draft a complaint that complies with Rule 8." *Id.*;

(Cont'd)

to do. *Lampkin-Asam v. Volusia County Sch. Bd.*, No. 07-12704, WL 80708, at *2 (11th Cir. Jan. 9, 2008) (*per curiam*) (providing, in relevant part, "district courts have a supervisory obligation, under Rule 12(e), to *sua sponte* direct a plaintiff to better plead his [or her] complaint"); *see Estelle v. Gamble*, 429 U.S. 97, 98 (1976) ("The District Court, sua sponte dismissed the complaint for failure to state a claim upon which relief could be granted."). The record reveals the defendants filed multiple motions and memoranda to dismiss against each pleading filed.

Lampkin-Asam v. Volusia County Sch. Bd., No. 6:07-cv-116-Orl-31DAB, WL 1577814, at *2 n.2 (M.D. Fla. May 16, 2007) ("Although proceeding *pro se*, the Plaintiff claims to hold both Ph.D. and J.D. degrees. As a [former attorney,] substitute teacher and cancer scientist, she ostensibly has the education, training and experience to be capable of drafting a coherent complaint."); *see Morrison v. Morgan Stanley Properties*, No. 06-80751-CIV, WL 149975, at *3-*6 (S.D. Fla. Jan. 14, 2008) (addressing inadequacies of typical, *pro se* pleading and finding Eleventh Circuit's decision in *Lampkin-Asam v. Volusia County Sch. Bd.* instructive).

The unrelenting Petitioner then proceeded to seek certiorari review in this Court notwithstanding that, at this juncture, the district court as well as the three-judge appellate panel, or four federal judges, had found Plaintiff's third pleading legally insufficient, defective and rule non-compliant. FED. R. CIV. P. 8(a); *see McNeil v. United States*, 508 U.S. 106, 113 (1993) (discussed *infra*).

JURISDICTION

"Federal courts have original jurisdiction of all civil actions that arise under the Constitution or laws of the United States." *Jairath v. Dyer*, 154 F.3d 1280, 1282 (11th Cir. 1998) (*citing*, 28 U.S.C. § 1331). Additionally, the United States Supreme Court is the final arbiter of the U.S. Constitution, as well as issues arising under federal law, such as Petitioner's claims under 42 U.S.C. § 1983 and the 14th amendment of the U.S. Constitution. *Arizona v. Evans*, 514 U.S. 1, 8 (1995). Petitioner also invoked the Court's certiorari jurisdiction under

28 U.S.C. § 1254(1),[2] and Respondent does not dispute that the Court has jurisdiction to determine its own jurisdiction. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) ("Moreover, courts, including this Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.").

REASONS FOR DENYING THE PETITION[3]

I. *No Basis Was Established by Petitioner to Enable the Court to Exercise Its Certiorari Jurisdiction.*

Without exception, just like her profusive filings in this Court before the instant Petition, the *pro se* Petitioner, who (obviously) is no stranger before this Court, has once again failed to present a "compelling reason" to enable the Court to exercise its certiorari jurisdiction. Sup. Ct. R. 10; EUGENE GRESSMAN, ET AL., SUPREME COURT PRACTICE § 4 (9th ed. 2007); *see, e.g.*, *Asam v. Hancock*, 522 U.S. 983 (1997) (denying cert.); *Asam v. Owens*, 522 U.S. 862 (1997) (denying cert.); *Asam v. Ryan*, 520 U.S. 1275 (1997) (denying cert.); *Asam v. Norris*, 520 U.S. 1265 (1997) (denying cert.); *Asam v. Devereaux*, 520 U.S. 1265 (1997) (denying cert.); *Asam v. Disciplinary Bd. of the Ala. State Bar*, 519 U.S.

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[2] Petition, at p. i, Question Presented No. I.

[3] The arguments presented by Respondent are not intended to be nor are they directed at Petitioner per se but, rather, are directed at Petitioner's decisions to appeal the district court's as well as the Eleventh Circuit's judgments, all the while proceeding *pro se*. *Infra* note 8.

814 (1996) (denying cert.), *reh'g denied*, 519 U.S. 1001 (1996); *In re Asam*, 519 U.S. 981 (1996) (denying cert.); *Asam v. Ala. State Bar*, 519 U.S. 982 (1996) (denying cert.); *Asam v. Harwood*, 513 U.S. 826 (1994) (denying cert.); *Asam v. Harwood*, 511 U.S. 1078 (1994) (denying cert.); *Stokes v. Hatch*, 510 U.S. 1115 (1994) (denying cert.); *Asam v. City of Tuscaloosa*, 506 U.S. 974 (1992) (denying cert.); *Asam v. City of Tuscaloosa*, 506 U.S. 1033 (1992) (denying cert.); *Asam v. Shapiro*, 488 U.S. 1024 (1989) (denying cert.), *reh'g denied*, 489 U.S. 1073 (1989); *Asam v. Lee County Dist. Sch. Bd.*, 484 U.S. 951 (1987) (denying cert.), *reh'g denied*, 484 U.S. 1083 (1988); *In re Asam*, 484 U.S. 909 (1987) (denying cert.), *reh'g denied*, 484 U.S. 1021 (1988); *In re Asam*, 484 U.S. 909 (1987) (denying cert.), *reh'g denied*, 484 U.S. 1021 (1988); *Lampkin-Asam v. Miami Daily News, Inc.*, 459 U.S. 806 (1982) (denying cert.), *reh'g denied*, 459 U.S. 1189 (1983); *Asam v. Stanley*, 459 U.S. 859 (1982), *reh'g denied*, 459 U.S. 1189 (1983); *Lampkin-Asam v. FTP-NEA Union*, 451 U.S. 978 (1981) (denying cert.), *reh'g denied*, 453 U.S. 923 (1981); *Lampkin-Asam v. Supreme Court of Fla.*, 444 U.S. 1013 (1980) (denying cert.), *reh'g denied*, 444 U.S. 1103 (1980).

If the Court declines to exercise its certiorari jurisdiction, as it should, the Court would not reach the merits of the case. *State of Md. v. Baltimore Radio Show*, 338 U.S. 912, 919 (1950) (Frankfurter, J., respecting the denial of the petition for writ of certiorari)

> ("Inasmuch, therefore, as all that a denial of a petition for a writ of certiorari means is that fewer than four members of the Court thought it should be granted, this Court has

> rigorously insisted that such a denial carries with it no implication whatever regarding the Court's views on the merits of a case which it has declined to review. The Court has said this again and again; again and again the admonition has to be repeated.")

cf. Citibank, N.A. v. Wells Fargo Asia Ltd., 495 U.S. 660, 673 (1990) (Rehnquist, C.J., *concurring*) ("But the Court by its grant of certiorari has decided that the case should be considered on the merits."); (*citing, Ferguson v. Moore-McCormack Lines, Inc.*, 352 U.S. 521, 559 (1957) (Harlan, J., *dissenting*)); *Estelle v. Gamble*, 429 U.S. 97, 115 n.9 (1976) (Stevens, J., *dissenting*) (questioning why certiorari was granted where the case merely involved well-settled principles "at a time when the Court is thought by many to be burdened by too heavy a caseload").

Similar to the burden Petitioner has placed on this Court over multiple decades,[4] the Eleventh Circuit's judicial landscape has been littered with filings by Petitioner, the majority of the time filed *pro se* over the past thirty (30) years. *See, e.g., Asam v. V.A.*, 168 F.3d

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[4] *Day v. Day*, 510 U.S. 1, 2 (1993) (*per curiam*) ("Every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice.") (*citing, In re McDonald*, 489 U.S. 180, 184, (1989) (*per curiam*)). "Consideration of Day's repetitious and frivolous petitions for certiorari does not promote this end." *Day*, 510 U.S. at 2. *Infra* note 8, 16.

507 (11th Cir. 1999), *reh'g en banc denied*, 176 F.3d 496 (11th Cir. 1999); *In re Asam*, 117 F.3d 1432 (11th Cir. 1997) (affirming without opinion); *Asam v. Ryan*, 106 F.3d 417 (11th Cir. 1997) (affirming without opinion); *Asam v. Owens*, 113 F.3d 1251 (11th Cir. 1997) (affirming without opinion); *Asam v. Norris*, 691 So. 2d 1056 (Ala. 1996) (affirming without opinion); *Ex parte Asam*, 681 So. 2d 650 (Ala. 1996) (denying cert.); *Asam v. Devereaux*, 686 So. 2d 1222 (Ala. 1996) (*per curiam*) (affirming trial court judgment); *Asam v. Ala. State Bar*, 675 So. 2d 866 (Ala. 1996) (affirming disbarment of attorney Lampkin-Asam from Alabama State Bar, who was admitted in 1988); *Asam v. Sexton*, 79 F.3d 1159 (11th Cir. 1996) (affirming without opinion); *Asam v. Vreeland*, 51 F.3d 1051 (11th Cir. 1995) (affirming without opinion); *Asam v. Harwood*, 19 F.3d 36 (11th Cir. 1994) (affirming without opinion); *Asam v. Capps Trailer Sales, Inc.*, 631 So. 2d 251 (Ct. App. Ala. 1993) (affirming trial court judgment awarding fees and costs against then, Alabama-licensed attorney Asam); *Asam v. City of Tuscaloosa*, 599 So. 2d 1192 (Ct. App. Ala. 1992) (affirming trial court judgment); *Asam v. City of Tuscaloosa*, 585 So. 2d 60 (Ct. App. Ala. 1991) (dismissing appeal for lack of jurisdiction); *Asam v. City of Tuscaloosa*, 907 F.2d 1143 (11th Cir. 1990) (affirming without opinion), *reh'g en banc denied*, 912 F.2d 1470 (11th Cir. 1990); *Asam v. Shapiro*, 858 F.2d 744 (11th Cir. 1988) (affirming without opinion); *Asam v. Lee County Dist. Bd.*, 816 F.2d 686 (11th Cir. 1987) (affirming without opinion); *Lampkin-Asam v. Miami Daily News, Inc.*, 417 So. 2d 329 (Fla. 1982) (denying cert.); *Lampkin-Asam v. Lee County Sch. Bd.*, 404 So. 2d 869 (Fla. 1st DCA 1981) (affirming without opinion); *Lampkin-Asam v. Supreme Court of Fla.*, 601 F.2d 760

(5th Cir. 1979) (*per curiam*) (affirming district court judgment); *Lampkin-Asam v. Dunning*, 358 So. 2d 1201 (Fla. 3d DCA 1978) (dismissing appeal).

In all but two of the identified, reported cases wherein the former Alabama-licensed practitioner represented an appellant, the results obtained were virtually as dismal, as when Petitioner proceeded *pro se*. *See, e.g., Allen v. State*, 598 So. 2d 1031 (Ct. App. Ala. 1992) (affirming trial court judgment); *Bishop v. Southrail Corp.*, 595 So. 2d 857 (Ala. 1992) (affirming trial court judgment); *Waters v. Hipp*, 600 So. 2d 981 (Ala. 1992) (affirming trial court judgment); *Nelson v. Univ. of Ala. Sys.*, 594 So. 2d 632 (Ala. 1992) (affirming trial court judgment); *Brown v. Morris*, 593 So. 2d 59 (Ala. 1992) (*per curiam*) (affirming trial court judgment); *Williams v. Capps Trailer Sales, Inc.*, 607 So. 2d 1272 (Ct. App. Ala. 1992) (affirming virtually all of trial court's judgment); *Waters v. Univ. of Ala. Hosp.*, 591 So. 2d 450 (Ala. 1991) (affirming trial court judgment); *Williams v. Capp Trailer Sales*, 589 So. 2d 159 (Ala. 1991) (affirming trial court judgment); *Gant v. Gant*, 562 So. 2d 1347 (Ct. App. Ala. 1990) (affirming trial court judgment); *Williams v. City of Northport*, 557 So. 2d 1272 (Ct. App. Ala. 1989) (affirming trial court judgment); *Garner v. Barnett*, 576 So. 2d 234 (Ala. 1991) (reversing and remanding); *Garner v. Walker*, 577 So. 2d 1276 (Ala. 1991) (same as *Barnett*).

In most circumstances, consistency is preferred, even necessary and a highly regarded attribute. *See Marek v. Chesny*, 473 U.S. 1, 21 (1985) ("We previously have held that words and phrases in the Federal Rules must be given a consistent usage and be read *in pari*

materia, reasoning that to do otherwise would attribute a schizophrenic intent to the drafters.") (Brennan, J., Marshall, J., Blackmun, J., *dissenting*) (*citing*, quoting majority decision in *Delta Airlines, Inc. v. August*, 450 U.S. 346, 353 (1981)). However, little or no regard may exist where a Petitioner has consistently failed to demonstrate that certiorari jurisdiction lies, just as Petitioner has again failed to demonstrate in this case.

Unlike most *pro se* litigants, Petitioner is not without legal training, having obtained a legal education, practiced law and been "a former member of the Alabama State Bar." *Lampkin-Asam v. Volusia County Sch. Bd.*, No. 07-12704, WL 80708, at *1-*2 & n.1 (11th Cir. Jan. 9, 2008) (*per curiam*) (*citing, Asam v. Ala. State Bar*, 675 So. 2d 866 (Ala. 1996) (discussed *infra*)). Petitioner simply is not the typical *pro se* litigant, *Lampkin-Asam v. Volusia County Sch. Bd.*, No. 07-12704, WL 80708, at *2, nor was she eligible for leniency with respect to her pleadings because she affirmatively claimed to hold a Juris Doctor degree. *Lampkin-Asam v. Volusia County Sch. Bd.*, No. 6:07-cv-116-Orl-31DAB, WL 1577814, at *2 n.2 (M.D. Fla. May 16, 2007) (discussed *infra*) (*citing*, *Asam v. Ala. State Bar*, 675 So. 2d 866 (Ala. 1996)). *Pro se* Petitioner, unlike others, was not entitled the leniency afforded those litigants without the benefit of a legal education. *GJR Inv., Inc. v. County of Escambia*, 132 F.3d 1359, 1369 (11th Cir. 1998) ("Courts do and should show a leniency to *pro se* litigants not enjoyed by those with the benefit of a legal education.") (citation omitted); *see Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (providing, in relevant part, "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings

drafted by lawyers") (*citing*, quoting *Haines v. Kerner*, 404 U.S. 519 (1972)). Accordingly, the Court should not treat the instant Petition with any less stringent a standard than it would when drafted by an attorney, lawyer or other person claiming to have been legally educated. *Id.*; *see also McNeil v. United States*, 508 U.S. 106, 113 (1993) (providing, in relevant part, "we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel")

> [I]n the present day federal court system . . . review by this Court is almost entirely discretionary . . . We receive nearly 7,000 petitions for certiorari every Term,[5] and can grant only a tiny fraction of them. A high degree of selectivity is thereby enjoined upon us in exercising our certiorari jurisdiction and our Rule 10 embodies the standards by which we decide to grant review. One of the reasons contained in Rule 10.1(a) is the existence of a conflict between one court of appeals and another. The negative implication of this ground, borne out time and again in our decisions to grant and deny certiorari, is that ordinarily a court of appeals decision interpreting one of our precedents-even one deemed to be arguably inconsistent with it-will not be reviewed unless it conflicts with a decision of another court of appeals. This fact

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[5] The Court's website currently discloses "more than 10,000 cases on the docket per term" or 43% more than the 1995 term.

> is a necessary concomitant of the limited capacity in this Court.

Hubbard v. United States, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., O'Connor, J., Souter, J., *dissenting*); *see Yee v. City of Escondido*, 503 U.S. 519, 537 (1992) (declining to consider question and acknowledging if a conflict exists between the lower courts, "such a conflict is, of course, a substantial reason for granting certiorari under this Court's Rule 10").

Moreover, Petitioner failed to establish that the Eleventh Circuit's decision (i) was in conflict with the decision of another United States court of appeals on the same important matter; (ii) had decided an important federal question in a way that conflicts with a decision by a state court of last resort; (iii) had so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Court's supervisory power; (iv) decided an important question of federal law that has not been, but should be, settled by the Court or conflicts with a decision of this Court; or (v) presented any other sound, material basis for certiorari review. Sup. Ct. R. 10; EUGENE GRESSMAN, ET AL., SUPREME COURT PRACTICE § 4 (9th ed. 2007). In fact, none of these factors which, generally, provide the basis for the Court's exercise of certiorari jurisdiction, were even addressed in the subject Petition. Evidently, Petitioner jumped right into the merits of the case, without first substantively addressing and overcoming the threshold, required issue of certiorari jurisdiction. *See Boag v. MacDougal*, 454 U.S. 364, 366 (1982) (O'Connor, J., *concurring*) (discussed *infra*).

> . . . I find merit in Justice REHNQUIST's comments that this Court is not equipped to correct every perceived error coming from the lower federal courts.[6] The effectiveness of this Court rests in part on its practice of deciding cases of broad significance and of declining to expend limited judicial resources on cases, such as the present one, whose significance is limited to the parties. In exercising our discretionary certiorari jurisdiction, we should not be influenced solely by the merits of the petitioner's case.

Boag v. MacDougal, 454 U.S. at 366 (O'Connor, J., *concurring*).

> "The Supreme Court is not, and never has been, primarily concerned with the correction of errors in lower court decisions.[7] In almost all cases within the Court's appellate jurisdiction, the petitioner has already received one appellate review of his [or her] case. The debates in the Constitutional Convention make clear that the purpose of the establishment of one supreme national tribunal was, in the words of John Rutledge of South Carolina, 'to secure the national

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[6] This aspect of the decision is not intended to be nor should it be construed as an admission of error, where there was none, by the Eleventh Circuit. *Lampkin-Asam v. Volusia County Sch. Bd.*, No. 07-12704, WL 80708 (11th Cir. Jan. 9, 2008) (*per curiam*).

[7] *Infra* note 6.

> rights & uniformity of Judgmts.' The function of the Supreme Court is, therefore, to resolve conflicts of opinion on federal questions that have arisen among lower courts, to pass upon questions of wide import under the Constitution, laws, and treaties of the United States, and to exercise supervisory power over the lower federal courts. If we took every case in which an interesting legal question is raised, or our *prima facie* impression is that the decision below is erroneous, we could not fulfill the Constitutional and statutory responsibilities placed upon the Court. To remain effective, the Supreme Court must continue to decide only those cases which present questions whose resolution will have immediate importance far beyond the particular facts and parties involved."

MacDougal, 454 U.S. at 368 (Rehnquist, C.J., White, J., *dissenting*) (quoting former Chief Justice Vinson).

Having failed to address as well as overcome the threshold certiorari jurisdictional issue, the Petition is fatally flawed and destined for the same fate, as all her other petitions; to wit: "cert. denied." (citations omitted).

II. *The Instant Petition, Like Petitioner's Pleadings Below, Was Unintelligible.*

Reportedly, twice before being admitted to practice law by the Alabama State Bar, 30 and 26 years ago, respectively, Petitioner made prudent decisions to engage counsel to represent her on two separate

matters on appeal.[8] *Lampkin-Asam v. District Court of Appeal*, 364 So. 2d 469 (Fla. 1978), *receded from*, *Johnson v. Citizens State Bank*, 537 So. 2d 96 (Fla. 1989); *Lampkin-Asam v. Miami Daily News, Inc.*, 408 So. 2d 666 (Fla. 3d DCA 1982). The legal landscape does not reflect or show that such a decision was ever again made by Petitioner, just as in the case at bar.

> Even a skilled lawyer who represents himself [or herself] is at a disadvantage in contested litigation.[9] Ethical considerations may make it inappropriate for him [or her] to appear as a witness. He [or she] is deprived of the judgment of an independent third party in framing the theory of the case, evaluating alternative methods of presenting the evidence, cross-examining hostile witnesses, formulating legal arguments, and in making sure that reason, rather than emotion, dictates the proper tactical response in the courtroom. The adage that "a lawyer who

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[8] Petitioner's skills, as a lawyer, were found severely lacking. *Asam v. Ala. State Bar*, 675 So. 2d 866, 867-79 (Ala. 1996) (quoting from Tuscaloosa lawyer's letter that "Asam was completely and hopelessly unqualified," cautioning Asam that "you need an attorney in the worst sort of way to represent you in this hearing," and affirming Alabama State Bar's findings of guilt on 17 of 28 charges including, *inter alia*, multiple violations of rule requiring competent representation of a client, resulting in her disbarment). Her qualifications to conduct cancer research have also been assailed. *Lampkin-Asam v. Miami Daily News, Inc.*, 408 So. 2d 666, 667 (Fla. 3d DCA 1982).

[9] *Infra* note 8.

> represents himself [or herself] has a fool for a client" is the product of years of experience by seasoned litigators.[10]

Kay v. Ehrler, 499 U.S. 432, 437 (1991) (Stevens, J., delivering the opinion for a unanimous Court).

"Indeed, we have previously recognized a systematic interest in having a party represented by independent counsel even when the party is a lawyer.[11]" *McNeil v. United States*, 508 U.S. 106, 113 n.10 (1993) (*citing*, *Kay v. Ehrler*, 499 U.S. 432 (1991)).

A few examples, excerpted from the subject Petition, readily show its tortuous structure, lack of arrangement, patent incoherency and inept character; to wit: (i) within her first question presented Petitioner provided, in part, "the U.S.Court [sic] of Appeals . . . by affirming apparently never read the first three (3) pages of the 2nd Amended Complaint that was in the record, which clearly showed that the Federal Rules of Civil Procedure was correctly written . . ."; (ii) within her second question presented Petitioner provided, in part, "[w]hether the U.S. Court of Appeals, 11th Circuit holding F. S. state statute, 119,011(1) [sic], a public record, invalid snd [sic] repugnant to the U.S. Constitutional Amendments, One, Fifth and Fourteenth as well as 42 U.S.C. Section 1983 . . .[12]" (foremost, the

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[10] *Infra* note 8.

[11] *Infra* note 8.

[12] Below, Plaintiff only pled a violation of rights under 42 U.S.C. § 1983 and the 14th amendment of the U.S. (Cont'd)

Eleventh Circuit never even mentioned § 119.011(1), Florida Statutes, in its written opinion; *see Lampkin-Asam v. Volusia County Sch. Bd.*, No. 07-12704, WL 80708 (11th Cir. Jan. 9, 2008) (*per curiam*)); (iii) also, within her second question presented Petitioner provided, in part, "Dr. Lampkin-Asam has two lymphomas named after her that are mutant lymphomas . . ." (even if her assertion is correct, "[t]he contention is irrelevant to any issue in the cause." *N.L.R.B. v. Sands Mfg. Co.*, 306 U.S. 332, 346 (1939)); (iv) Petitioner's "concise" statement of the case, Sup. Ct. R. 14(1)(g), drones on for 24 pages, *I.T.S. Rubber Co. v. Essex Rubber Co.*, 272 U.S. 429, 432 n.2 (1926) ("This rule provides that the brief . . . shall contain, *inter alia*, a concise statement of the case . . ."); and (v) within her scant argument for why the Petition should be granted, Petitioner provided, in part, "[t]he instant case could be attempted murder ONE SINCE CLEARLY ACCORDING TO Sheriff record filed in Deland, Florida . . ." (again, even if her assertion is correct, "[t]he contention is irrelevant to any issue in the cause." *N.L.R.B. v. Sands Mfg. Co.*, 306 U.S. at 346).

It should be clear that the instant Petition, like her pleadings in the district court, was disjointed, repetitive, disorganized, barely comprehensible, confusing, incoherent, clogged with irrelevant factual assertions

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(Cont'd)
Constitution. Therefore, her assertions under the first and fifth amendments of the U.S. Constitution were not preserved for review. *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 469 (2000) ("It is indeed the general rule that issues must be raised in lower courts in order to be preserved as potential grounds of decision in higher courts.").

and just plain unintelligible.[13] The instant Petition only demonstrates that Petitioner should have, as she did twice before several decades ago, engaged counsel to represent her because, as it stands, her Petition is destined for the same fate, as all her other petitions; to wit: "cert. denied." (citations omitted).

III. *Petitioner's Claims Against Respondent Evans Failed, as a Matter of Law.*

A motion to dismiss is appropriate when it is demonstrated "beyond doubt that the plaintiff can prove no set of facts in support of his [or her] claim which would entitle him [or her] to relief."[14] *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). For the purpose of the motion to dismiss, the complaint is construed in the light most favorable to the plaintiff, and all facts alleged by the plaintiff are accepted as true. *Hishon v. King & Spaulding*, 467 U.S. 69, 73 (1984). Regardless of the alleged facts, however, a court may dismiss a complaint on a dispositive issue of law. *Marshall County Bd. of Educ. v. Marshall County Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993). "Conclusory allegations in the complaint need not be taken as true and the plaintiff must allege sufficient facts to support his [or her] allegations." *Marine Coatings of Ala., Inc. v. United States*, 792 F.2d 1565, 1568 (11th Cir. 1986).

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[13] *Infra* note 8.

[14] *Infra* note 1.

A. *Plaintiff Failed to Allege Facts Sufficient to Support Requisite that Evans Was a State Actor.*

"Constitutional due process protections do not extend to 'private conduct abridging individual rights.' " *Davis v. Prudential Sec., Inc.*, 59 F.3d 1186, 1190 (11th Cir. 1995) (*citing*, quoting *Nat'l Collegiate Athletic Ass'n v. Tarkanian*, 488 U.S. 179, 191 (1988) (*citing*, quoting *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 722 (1961)). As the Eleventh Circuit stated in *Davis*, "only state action is subject to scrutiny under the Due Process Clause." *Id.* at 1190-91. In that case, the Eleventh Circuit held that the arbitration at issue was a private and not state action, even though the federal arbitration act sought to regulate private arbitration proceedings and even though a district court affirmed the arbitrator's award of punitive damages. *See Davis*, 59 F.3d at 1191. In other words, absent state action, the claim is, essentially, dead on arrival.

In order to state a claim under section 1983, a plaintiff must allege and prove three elements: (1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally inadequate process. *Cryder v. Oxendine*, 24 F.3d 175, 177 (11th Cir. 1994). The second requirement, state action, means that section 1983, "excludes from its reach private conduct, no matter how discriminatory or wrongful." *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1277 (11th Cir. 2003); *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982) (providing the 14th amendment offers no shield against private conduct "however

discriminatory or wrongful") (*citing*, quoting *Civil Rights Cases*, 109 U.S. 3 (1883)).

Stated otherwise,

> [t]o state a claim for relief in an action brought under § 1983, [petitioner] must establish that [s]he[] w[as] deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law. Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach "'merely private conduct, no matter how discriminatory or wrongful.'" *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982) (quoting *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948)). Where, as here, deprivations of rights under the Fourteenth Amendment are alleged, these two requirements converge. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 935, n. 18 (1982).

Am. Mfrs. Mutual Ins. Co. v. Sullivan, 526 U.S. 40, 49-50 & n.8 (1999).

Plaintiff, however, never alleged that Evans' actions constituted "state action." Instead, Plaintiff merely alleged that Evans was "connected to state action" or that she "does have a connection with state action." Plaintiff's sole support for these allegations of connection with state action was her other allegations that Evans "showed she was connected to state action

when she did not have the USIS pay the hospital bill." Plaintiff further alleged that because Evans "has been abusing the Florida Statute 440.134(17) she does have connection with state of Florida action," and that Evans has violated the Plaintiff's "rights of life, liberty, and property under the 14th amendment to the U.S. Constitution." None of these allegations, even taken as true, was sufficient to support a cause of action that requires state action. USIS is not the State of Florida, nor had the Plaintiff so alleged, nor does a private person's alleged "abuse" of a state statute convert that private person's action into state action.

For these and other compelling reasons, all of the Plaintiff's claims against Defendant Evans were properly dismissed with prejudice.

B. *Plaintiff Had Not Alleged Facts Sufficient to Support a Cause of Action Against Evans.*

Plaintiff had not alleged that Evans breached any legal duty to her or violated any law that would give rise to a private cause of action. *See Bus. Alliance for Responsible Dev. v. Storm Water Mgmt.*, 462 F. Supp. 2d 1186, 1189 (N.D. Ala. 2006) ("A complaint alleging the violation of a federal statute . . . does not necessarily state a claim arising under the laws of the United States when Congress has created no private, federal cause of action for the violation of federal law.") (*citing, Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 808-09 (1986); other citation omitted). However, the U.S. Congress could not lawfully create a private, federal cause of action under the 14th amendment because this Court has already determined such action must

constitute state action or action by an actor of the state and not a private person. *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982) (quoting *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948)); *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 935, n. 18 (1982); *Am. Mfrs. Mutual Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999).

Petitioner's second amended complaint and attachments showed that Plaintiff received care from at least three medical care professionals. Defendant Evans followed up on the Plaintiff's health status, sought out Dr. Gebel's evaluation of her ability to return to work, and informed Plaintiff that her physician said that she was "able to return to Full Duty work as of 11/29/05 with regard to your Worker's Compensation injury.[15]" Plaintiff simply failed to state any legally cognizable claim upon which relief could be granted against Respondent Evans.

For all these and other compelling reasons, all of Plaintiff's claims against Respondent Evans were properly dismissed with prejudice.

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[15] On a motion to dismiss for failure to state a claim, "courts review only the face of the complaint and attachments thereto." *Zlotnick v. Premier Sales Group, Inc.*, 480 F.3d 1281, 1287 (11th Cir. 2007) (*citing*, quoting *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1368 (11th Cir. 1997)). The quoted statement above was excerpted from an attached exhibit to Petitioner's pleading (below).

CONCLUSION

Petitioner did not even address and, therefore, failed to establish any compelling reason to enable the Court to exercise its certiorari jurisdiction and then consider the merits of the case. Accordingly, Respondent, Suzanne Evans, R.N., respectfully requests the Petition be denied. Even if the Court might exercise its certiorari jurisdiction, which it should not, nevertheless, there is no basis in law or fact to disturb the lower courts' judgment against Respondent Evans. Thus, even if the Court reaches the merits, which it should not, the judgment below should be affirmed with respect to Respondent, Suzanne Evans, R.N.

In conclusion, Respondent takes the liberty and this opportunity to recommend that, after 30 filings (before the instant Petition) in an institutional Court of limited resources during the past 28 years, it may be time for the Court to issue a decree to preclude any further *pro se* filings by Petitioner, in this Court.[16] *See In re Vey*, 520 U.S. 303, 303-04 (1997) (*per curiam*); *Day v. Day*, 510 U.S. 1, 1-2 (1993) (*per curiam*). The incessant, rising tide of cert. petitions in this Court seems to warrant such a decree.[17]

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[16] Petitioner asserted in her Petition that "[o]n September 18, 1992, I was personally allowed to practice in the Supreme Court of the United States." Petition, at p. 11. In light of the *pro se* Petitioner's repeated, non-cert.-worthy filings in this Court, as well as her disbarment and lack of a license to practice law, the Court may also wish to consider revoking that privilege. *Asam v. Ala. State Bar*, 675 So. 2d 866 (Ala. 1996); *cert. denied*, 519 U.S. 982 (1996). If for no other reason, Respondent deemed this issue worthy of the Court's consideration. *Infra* note 4, 8.

[17] *Infra* note 4, 5.

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